

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

SUSAN ZAWACKY, individually, and as
Personal Representative of the Estate of
JENOAH DONALD, deceased;
ALEXZANDRA GASAWAY, individually,
and as guardian of minor child **I.D.**;
TIFFANY WALLAWAY, individually, and
as guardian of minor child **S.W.**; **KARLIE**
KOACH, individually, and as guardian of
minor child **C.K.**;

Plaintiffs,

v.

COUNTY OF CLARK, a political
subdivision of the State of Washington;
SHERIFF CHUCK ATKINS; Sheriff's
Deputy **SEAN BOYLE**; Sheriff's Deputy
HOLLY TROUPE; and **JOHN and JANE**
DOES 1-10, in their official and personal
capacities,

Defendants.

NO.

COMPLAINT

JURY DEMANDED

COMES NOW the above-named Plaintiffs, by and through attorney Mark
Lindquist of Herrmann Law Group, by way of claim, allege upon personal knowledge as
to themselves and their own actions and upon information and belief upon all other
matters, as follows:

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I. INTRODUCTION

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2 1. Jenoah Donald was pulled over in an unlawful “pretextual” traffic stop by
3 Clark County Sheriff’s Deputy Sean Boyle. Sheriff’s Deputy Holly Troupe arrived to
4 assist. A new officer on a new assignment, she mistakenly thought she saw a weapon
5 in Mr. Donald’s cluttered car.

6 2. Deputy Boyle ordered Mr. Donald out of the car. When Mr. Donald did not
7 immediately comply, the deputy quickly escalated the situation by attempting to
8 physically drag Mr. Donald out. Deputy Troupe grabbed Mr. Donald’s jaw. Unarmed, Mr.
9 Donald passively resisted.

10 3. Failing to physically remove Mr. Donald from the car, Deputy Boyle, without
11 provocation, further escalated the situation by punching Mr. Donald in the nose. This did
12 not coax Mr. Donald out of the car.

13 4. Instead of stepping back and considering de-escalation and other options,
14 Deputy Boyle again tried to physically drag Mr. Donald out of the car. During the struggle,
15 the gear shift on the center console was bumped into gear. The car rolled forward.

16 5. Deputy Boyle, with his feet planted outside the car, drew his service
17 weapon and shot at Mr. Donald. The first bullet hit the outside of the pillar between the
18 front and back seats. After missing, Deputy Boyle shot a second time and the bullet hit
19 Mr. Donald in the head. He died a week later.

20 6. About three months prior to this shooting, Clark County Sheriff’s Deputies
21 shot and killed Kevin Peterson Jr. as he was running away from them after trying to sell
22 Xanax to an informant.

23 7. On or about January 29, 2022, one of the deputies who shot at Kevin
24 Peterson shot and killed an off-duty Vancouver Police Officer, apparently mistaking him
25 for a criminal suspect.

26 8. Clark County has a policy, custom, and established practice of failing to
27 supervise and train its officers to use deadly force only as a last resort.
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II. PARTIES

9. Defendant CLARK COUNTY is a political subdivision of the State of Washington. Defendant has various departments, including but not limited to the Sheriff's Department "CCSD," which is responsible for providing law enforcement services within the County of Clark. CCSD's mission is to "protect and safeguard our community."

10. Defendant SHERIFF CHUCK ATKINS, was the elected Sheriff of the CCSD, who, at all times relevant hereto, was acting under color of law. In this role, he made supervisory decisions as they relate to Defendant deputies, including discipline, assignment, and training. The Sheriff's acts and omissions were, at all times alleged, affirmatively linked to the behavior of Defendant deputies in the sense that he encouraged, condoned, and/or acquiesced in their acts, omissions, customs and established practices.

11. Defendant SEAN BOYLE is a Clark County Sheriff's Deputy who, at all times relevant hereto, was acting within the scope of his employment, and under color of law.

12. Defendant HOLLY TROUPE is a Clark County Sheriff's Deputy who, at all times relevant hereto, was acting within the scope of her employment, and under color of law.

13. Defendants JOHN DOES 1-10 (hereinafter "Defendants Doe") are employees and/or agents of the Clark County Sheriff's Department. Each Defendant Doe was within the scope of his or her employment at all relevant times. Defendants Doe knew and were deliberately indifferent and were negligent; acted in furtherance of an official and/or *de facto* policy or procedure of deliberate indifference and negligence; and/or were responsible for the promulgation of the policies and procedures and permitted the customs and practices pursuant to which the acts alleged herein were committed. Their identities are unknown at this time and will be named as discovery progresses.

1 school, his mother began home schooling him. He failed the GED test and his mother
2 remembers him crying in frustration.

3 20. While schoolwork was difficult, he did have a talent for mechanical
4 tinkering. He liked to work with engines. For example, he would remove small engines
5 from lawnmowers and install them on bicycles or scooters.

6 21. As an adult, Many officers in local law enforcement knew him. His family
7 reports he had a positive relationship with local officers. At least one local officer served
8 as a mentor to Jenoah as he tried to put his life on the right track.

9 22. Mr. Donald continued to tinker with engines as an adult. He would buy
10 clunker cars to fix them, restore them, and sell them. In January and February of 2020,
11 he was working on an older Mercedes Benz sedan.

12 23. In the last week of January, 2020, Mr. Donald was stopped by a Clark
13 County Sheriff's Deputy, apparently because he did not have a license or Trip Permit for
14 the Mercedes, which was a work in progress. The deputy wrote him a citation for Driving
15 With Suspended License, advised him to get a Trip Permit, and sent him on his way.

16 24. On or about February 4, 2020, Mr. Donald was driving this same Mercedes
17 in the neighborhood of Hazel Dell, an unincorporated portion of Clark County. He now
18 had a Trip Permit.

19 25. At about 7:40 pm Clark County Sheriff's Deputy Sean Boyle, a K-9 officer,
20 heard radio traffic about "suspicious activity" near a known "drug house." Deputy Boyle
21 had over 20 years of experience in law enforcement.

22 26. Deputy Boyle "self-dispatched" in the direction of the drug house. He
23 stopped short of the location to wait for backup units so they could all arrive on scene at
24 approximately the same time.

25 27. While waiting, he noticed an older Mercedes that may have been "similar"
26 to cars described in the call about drug house activity. He left his position and pulled in
27 behind the vehicle. After deciding to pursue the vehicle for suspicion of drug activity, he
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1 noticed the car's right brake light was out. Deputy Boyle initiated what's commonly known
2 as a "pretextual" traffic stop.

3 28. Pretextual traffic stops are expressly prohibited in Washington under *State*
4 *v. Ladson*, 138 Wash. 2d 343 (1999). An officer who lacks probable cause to pull over a
5 citizen for suspicion of drug use cannot lawfully use defective equipment as a "pretext"
6 for stopping the citizen.

7 29. Mr. Donald pulled over promptly. Deputy Boyle approached the driver's
8 side window and asked for license, registration, proof of insurance, the usual routine.
9 The deputy apparently neglected to have Mr. Donald turn off the vehicle and/or remove
10 the ignition keys.

11 30. Mr. Donald responded his license was suspended and he did not have the
12 registration. He explained he had only recently restored the car to running condition. He
13 gave the deputy his Washington I.D. card in lieu of a valid license and gave his correct
14 address because the I.D. address was outdated.

15 31. Deputy Troupe joined the scene at about this time. She stepped up to the
16 passenger side of the car. Deputy Boyle returned to his patrol car to check information
17 on the vehicle.

18 32. Deputy Agar joined the scene in his patrol car. Deputy Boyle asked Deputy
19 Agar to stay nearby. Deputy Agar parked. Deputy Troupe stayed at the front passenger
20 window to observe Mr. Donald.

21 33. Deputy Troupe graduated from the law enforcement academy in April of
22 2020. She began the FTO program in May of that year and graduated in August. In
23 January of 2021, she began a new assignment as a solo patrol officer.

24 34. Deputy Troupe was troubled by the messiness of the car. In an interview
25 after the shooting, she described the interior as "very chaotic." She described her attitude
26 toward Mr. Donald this way: "At no point in time did I think that he wasn't getting ready
27 to hurt me in some way."
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1 35. In the clutter of the car Deputy Troupe saw an object she described as “this
2 approximately three-to-five-inch metal spike with an end of it, and a ball handle.” She
3 referred to this object repeatedly in the interview as a weapon, never using the word
4 “screwdriver,” but photos later revealed it to be a standard screwdriver.

5 36. She told Mr. Donald to show his hands, even though she could see his
6 hands “in his lap.” She did not like how his hands were positioned in his lap and repeated
7 her commands. At some point he held up a cell phone and pair of pliers to show he did
8 not have any weapons. “You need to chill out,” he said. She said the same thing or
9 something similar to him.

10 37. Deputy Boyle, hearing the tension in Deputy Troupe’s voice, decided to
11 return to the vehicle to “calm everything down.”

12 38. Deputy Boyle, “a very muscular person, very fit,” was approximately
13 seventy pounds heavier than Mr. Donald. He opened the driver’s side door and told Mr.
14 Donald to get out.

15 39. Mr. Donald did not immediately comply. Without further request or
16 explanation, the deputy immediately reaches into the car and grabs Mr. Donald and
17 attempts to physically drag him out.

18 40. Deputy Troupe comes around the vehicle and assists Deputy Boyle in his
19 effort to wrestle Mr. Donald from the car. She grabs Mr. Donald’s jaw and lifts his head
20 in a “pain compliance” technique.

21 41. Mr. Donald does not fight back, but passively resists. Deputy Troupe finds
22 Mr. Donald’s withdrawn, “relaxed” manner “unnerving.”

23 42. Deputy Boyle threatens Mr. Donald with his K-9, which is barking in his
24 patrol vehicle. “You need to get out of the car or my dog’s going to bite you.” This is
25 apparently a ruse as the deputy’s “dog remote’s stuck.”

26 43. Deputy Agar joins the fracas on foot, intending to help the other two
27 deputies pull Mr. Donald from the car. Because there isn’t space enough at the driver’s
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1 door for three bodies, however, Deputy Agar backs off and attempts to contact dispatch
2 to report the struggle.

3 44. Mr. Donald continues to passively resist the effort to remove him from the
4 car. Deputy Boyle leans into the car and punches Mr. Donald in the nose. "Really?" Mr.
5 Donald says. This "diversionary tactic" fails.

6 45. Making no progress in removing Mr. Donald by force, Deputy Boyle
7 declines to step back and consider non-physical means of removing him from the car.
8 Instead, Deputy Boyle endangers himself and everyone else at the scene by leaning into
9 the car to engage in hands-on wrestling.

10 46. Mr. Donald does not fight back, but continues to resist. Deputy Agar is
11 standing by and recalls seeing Mr. Donald "using his feet to kick, um, or push Deputy
12 Boyle away from him ..."

13 47. Deputy Boyle continues to order Mr. Donald to get out of the car. Deputy
14 Troupe remembers Deputy Boyle's words as, "Get out of the car. I'm going to shoot
15 you," or "Get out of the car or you're going to get shot."

16 48. None of the deputies hear Mr. Donald threaten anyone and they never see
17 him reach for a weapon or anything that could be used as a weapon.

18 49. All three deputies are armed with Tasers and other non-lethal weapons.

19 50. All three deputies report the car engine turned on or became louder during
20 the tussle, which indicates the engine was likely never turned off and/or the keys were
21 not removed from the ignition as it's implausible that Mr. Donald could pick up the keys
22 and re-start the engine while resisting active force of two deputies.

23 51. Somehow the gear shift, which is located on the center console between
24 the front seats, is knocked into drive and the car begins to roll forward.

25 52. With his "feet planted" on the ground outside the vehicle, Deputy Boyle
26 draws his service weapon with his left hand and fires at Mr. Donald. The bullet hits the
27 outside of the pillar between the front and back seats.

53. After firing and missing, Deputy Boyle shoots a second round at Mr. Donald's head. The bullet enters Mr. Donald's skull.

54. In an interview five days after the shooting, Deputy Boyle, accompanied by a lawyer, claimed he feared he was going to be dragged by Mr. Donald as the car rolled. Evidence, however, indicates the deputy was standing outside the vehicle when he shot his weapon. He admits his feet were "planted on the ground" and the first bullet strike is on the outside of the pillar.

55. In the interview, Deputy Boyle further claimed that even *after* he shot Mr. Donald in the head, Mr. Donald "still had a hold of my vest." This is physically implausible given the evidence of the first bullet strike, the distance between the two men, their relative positions, and Mr. Donald's fatal head wound.



56. Deputy Troupe was standing near Deputy Boyle at the moment of the shooting and considers him a friend as well as a colleague. She did *not* report seeing Mr. Donald's hand on Deputy Boyle's vest.

57. Deputy Agar, who also considers Deputy Boyle a friend as well as a colleague, also did not report seeing Mr. Donald's hand on Deputy Boyle's vest. He was standing behind Deputy Boyle and Deputy Troupe.

1 58. With Mr. Donald slumped over, the car continued to roll forward. After
2 crossing a street, the car went into a yard, knocked over a fence, and stopped. All three
3 deputies followed the car.

4 59. Deputy Agar pulled Mr. Donald's body from the front seat. He saw "blood
5 dripping from the wound." The deputy applied pressure to the area. Mr. Donald was "non-
6 verbal."

7 60. Fire and EMR arrived. They transported Mr. Donald to the hospital.

8 61. His mother Sue and his brother Josh visited Mr. Donald repeatedly. He
9 never regained consciousness.

10 62. Seven days after the shooting, Mr. Donald died from the head wound.

11 **B. CLARK COUNTY SHERIFF'S DEPARTMENT POLICIES, CUSTOMS, AND**
12 **ESTABLISHED PRACTICES**

13 63. About three months prior to killing Mr. Donald, Clark County Sheriff's
14 Deputies shot and killed Kevin Peterson Jr., who was African American. Mr. Peterson
15 attempted to sell 50 Xanax pills to an informant.

16 64. Mr. Peterson, who was armed, was shot while running away from deputies.
17 Deputy Robert Anderson, the first officer to shoot, said in an interview, "I just kinda drew
18 the line in the sand ... I've given the suspect enough commands. If he takes another
19 step, I'm gonna shoot him." And he did shoot him, repeatedly.

20 65. Another officer, Deputy Jonathan Feller, also shot at Mr. Peterson while he
21 was running away. Deputy Feller's statements in his interview were at odds with both the
22 physical evidence and his fellow officers.

23 66. Deputy Anderson and Deputy Fuller were not terminated, suspended,
24 disciplined, re-assigned, or re-trained by Clark County after the Peterson shooting.

25 67. On or about January 29, 2022, Deputy Feller shot and killed an off-duty
26 police officer, Donald Sahota. Within seconds of arriving at a crime scene, Deputy Feller
27 hastily fired numerous rounds at the officer, striking him several times. The deputy
28 apparently mistook the off-duty officer for a criminal suspect.

68. In November of 2014, the Washington State Attorney General issued an opinion that law enforcement departments do not require the consent of individual officers to use body cameras.

69. Clark County and Sheriff Atkins have declined to implement the use of body cameras at CCSD. None of the CCSD deputies were wearing body cameras at the time Mr. Donald, Mr. Peterson, and Officer Sahota were shot and killed.

70. With deliberate indifference, Clark County has a policy, custom, and established practice of failing to supervise and train its officers to use deadly force only as a last resort as required by generally accepted police practices and federal and state law.

71. With deliberate indifference, Clark County has a policy, custom, and established practice of failing to supervise and adequately train its officers on de-escalation techniques, non-lethal tactics, the decision-making process preceding use of deadly force, and how to interact safely with citizens suffering from behavioral health issues such as autism.

72. With deliberate indifference, Clark County has a policy, custom, and established practice of racial discrimination, bias, and inadequate training. These policies, customs, and practices caused deputies in the case of Jenoah Donald to illegally pull over an African American driver, to unjustifiably fear an unarmed civilian who never threatened them, and to grossly overreact to passive resistance, among other problems for the community they are sworn to safeguard and protect.

73. Each of these policies, customs, and established practices, described above and in other respects as well, were ratified by Clark County and/or Sheriff Atkins and/or other policy makers, and were a direct, proximate cause of Jenoah Donald's wrongful death.

V. CLAIMS

FIRST CAUSE OF ACTION: NEGLIGENCE - STATE CLAIM

74. Plaintiffs hereby restate and incorporate by reference all paragraphs of this

1 Complaint as if fully set forth herein.

2 75. All Defendants owed a duty to Plaintiffs to act as reasonable prudent
3 persons. This duty includes an obligation to act in a careful, lawful and prudent manner
4 and in full compliance with applicable law. At all times relevant to this case, all
5 individually named Defendants were acting within the course and scope of their
6 employment. Clark County is liable for the negligence of all individually named
7 Defendants.

8 76. Defendants Clark County and Sheriff Atkins had a duty of care to properly
9 train officers. Such training should reasonably have included instruction on the
10 differences between lawful and unlawful stops and arrests, how to carry out lawful stops
11 and arrests without using excessive force and brutality, best practices when detaining
12 citizens with behavioral health issues such as autism, de-escalation techniques, and
13 deadly force as a last resort, among other issues.

14 77. By virtue of the facts set forth above, Defendant deputies, as law
15 enforcement agents of Clark County, breached their duty to act as reasonable law
16 enforcement officers by failing, neglecting and/or refusing to properly and fully discharge
17 their responsibilities.

18 78. Defendants Clark County and Sheriff Atkins were responsible for training
19 and supervising the individually named Defendant deputies and had a duty to adequately
20 train and supervise those deputies. Defendants acted negligently by failing to adequately
21 and properly train and supervise the individually named deputies with respect to the
22 discharge of their responsibilities and duties.

23 79. As a proximate cause of Defendants' breach of their duties, Plaintiffs have
24 suffered harm, entitling Plaintiffs to damages in an amount to be proven at trial, including,
25 but not limited to, loss of income, loss of liberty, shock, extreme emotional distress, and
26 anxiety, all of which have resulted in general damages for pain and suffering in an
27 amount to be proven at trial.

SECOND CAUSE OF ACTION: ASSAULT AND BATTERY - STATE CLAIM

80. Plaintiff hereby restate and incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

81. By virtue of the facts set forth above, Defendant Deputies Boyle and Troupe are liable for assault and battery of Mr. Donald.

82. Because Clark County and Sheriff Atkins could have prevented this assault and battery by exercise of due care by government employees, Clark County and Sheriff Atkins are liable for negligence resulting in the assault and battery of Mr. Donald.

83. As a proximate result of the acts alleged herein, Plaintiffs suffered harm at the hands of Defendants Clark County, Sheriff Atkins and the deputies, entitling Plaintiffs to damages in an amount to be proven at trial.

THIRD CAUSE OF ACTION: 42 U.S.C. § 1983 - EXCESSIVE FORCE AND BRUTALITY

84. Plaintiffs hereby restate and incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

85. By virtue of the facts set forth above, all Defendants are liable for the deprivation of Mr. Donald's civil rights guaranteed by the Fourth Amendment to the Constitution of the United States and 42 U.S.C. § 1983, to be free from unreasonable searches and seizures, including excessive force and physical brutality.

86. Such rights are long-standing and clearly established.

87. Plaintiffs hereby restate and incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

88. By virtue of the facts set forth above, Defendant Clark County is liable under *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978), in that a policy or custom can be inferred from a showing of ratification of an unconstitutional act and CCSD's policies, customs, and established practices.

FOURTH CAUSE OF ACTION: 42 U.S.C. § 1983, UNREASONABLE SEIZURE

89. Plaintiffs hereby restate and incorporate by reference all paragraphs of this complaint as if fully set forth herein.

1 and loss of familial relations, and loss of society and companionship pursuant to 42
2 U.S.C. §§ 1983 and 1988, in an amount to be determined at trial;

3 (b) Punitive damages;

4 (c) Awarding reasonable attorneys' fees and costs pursuant to 42 U.S.C. §
5 1988, or as otherwise available under the law;

6 (d) Declaring the defendants jointly and severally liable;

7 (e) Awarding any and all applicable interest on the judgment; and

8 (f) Awarding such other and further relief as the Court deems just and proper.

9 Respectfully submitted this 16th day of February, 2022.

10 **HERRMANN LAW GROUP**

11 /s/ Mark Lindquist

12 _____
13 Mark Lindquist, WA #25076
14 Attorney for Plaintiffs